

OFFICE OF THE ATTORNEY GENERAL

92-00332



JIMMY EVANS
ATTORNEY GENERAL
STATE OF ALABAMA

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ALABAMA STATE HOUSE
11 SOUTH UNION STREET
MONTGOMERY, ALABAMA 36130
AREA (205) 242-7300

Honorable Wallace Wyatt, Jr.
Judge of Probate
St. Clair County
Pell City, Alabama 35125

Elections - Candidates - Probate
Judges - Ballots

Given the facts in this case, the
county party chairman may correct
the certification of candidates
filed with the probate judge.

Dear Judge Wyatt:

This opinion is issued in response to your request for an
opinion from the Attorney General.

QUESTION

Can a county party chairman legally change
or correct his certification to the probate
judge of an unopposed primary candidate?

FACTS AND ANALYSIS

Your request presents the following:

The candidate maintains that she qualified
in place no. 4 rather than place no.3.

The party chairman, by his own statement,
improvidently certified the candidate to the
probate judge in place no. 3.

The candidate is unopposed in the Primary in either place no. 3 or place no. 4.

The deadline for qualifying or filing declarations of candidacy for primary elections is set forth in Code of Alabama 1975, § 17-16-11, which provides in pertinent part:

"(a) All candidates for nomination to public office or for election to party office in the primary provided for in this chapter shall file their declaration of candidacy with the state party chairman if they seek any office other than a county office (including federal, state, circuit and district offices, the state senate and house of representatives), and with the county party chairman if they seek a county office, not later than 5:00 P.M. 60 days before the date of such primary.

"(b). . . The county party chairman shall, not later than 5:00 P.M. 55 days prior to the date of the primary election, certify to the probate judge the names of all candidates for nomination to county offices or election to county party offices

"(c) The probate judge of each county shall have the ballots prepared for the primary election. If a legally qualified candidate for nomination to an office is unopposed when the last date for filing declarations of candidacy has passed, his name shall not appear on the ballots to be used in the primary election, and he shall be the nominee of the party with which he has qualified for the office. . . ."
(Emphasis added.)

The candidate at issue in this opinion filed her declaration of candidacy with the county party chairman on April 2, 1992. The deadline for filing was April 3, 1992. A copy of this declaration of candidacy, supplied to this office, shows that the candidate qualified with the county party chairman for Place No. 4. On April 7, 1992, before the deadline of April 8, 1992, the county party chairman certified to the probate judge that the candidate in question had qualified for Place No. 3.

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Approximately one month later, on May 8, 1992, the county party chairman filed an "affidavit of correction of certification" with the probate judge stating that he had improvidently certified the candidate in Place No. 3 when in fact she had qualified in Place No. 4. Since the candidate had no opposition in the primary in either place No. 3 or 4, her name did not appear on the primary ballot as is authorized by § 17-16-11 cited above.

It seems clear that before the qualifying deadline the county party chairman could have corrected or changed the certification of candidates. The question is whether the chairman may correct the certification after the deadline has passed. Generally, after the qualifying deadline has passed a candidate is not allowed to change the office for which she seeks election. However, under these particular facts, it appears that the candidate did not change the office in which she qualified but rather the county party chairman mistakenly certified the office to the probate judge.

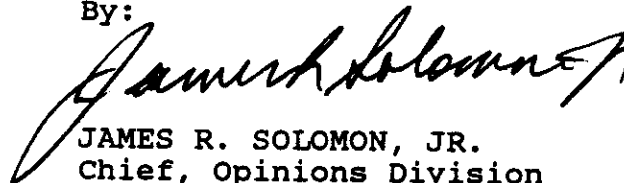
CONCLUSION

It is our opinion, given the particular facts in this case, that the county party chairman may correct the certification of candidates filed with the probate judge.

I hope this sufficiently answers your question. If our office can be of further assistance, please do not hesitate to contact us.

Sincerely,

JIMMY EVANS
Attorney General
By:



JAMES R. SOLOMON, JR.
Chief, Opinions Division

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